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5 KUANG-BAO PAUL OU-YOUNG,
6 Plaintiff,
7 v.
8 CHRISTOPHER G. RUDY, et al.,
9 Defendants.

10 Case No. 21-cv-07361-BLF
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**ORDER VACATING MOTION
HEARING SET FOR AUGUST 18, 2022;
GRANTING FEDERAL DEFENDANTS'
MOTION TO DISMISS OFFICIAL
CAPACITY CLAIMS WITHOUT
LEAVE TO AMEND; *SUA SPONTE*
DISMISSING INDIVIDUAL
CAPACITY CLAIMS WITHOUT
LEAVE TO AMEND; AND
DISMISSING FEDERAL
DEFENDANTS WITH PREJUDICE**

[Re: ECF 39]

20 Plaintiff Kuang-Bao Paul Ou-Young, proceeding *pro se*, claims that hundreds of federal,
21 state, and local government officials entered into multiple conspiracies to deprive him of his civil
22 rights between 2016 and 2022. The only remaining defendants are eighty-two persons affiliated
23 with the federal government (“the Federal Defendants”). The United States of America (“the
24 Government”) has appeared on behalf of the Federal Defendants in their official capacities only,
25 and it seeks dismissal of all claims against Federal Defendants in their official capacities under
26 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The Government has not appeared on
27 behalf of the Federal Defendants in their individual capacities, but it urges the Court to dismiss all
28 claims against the Federal Defendants in their individual capacities *sua sponte*. The Court finds

1 the motion to be suitable for decision without oral argument and VACATES the August 18, 2022
2 hearing. *See* Civ. L.R. 7-1(b).

3 The motion to dismiss all claims against the Federal Defendants in their official capacities
4 is GRANTED WITHOUT LEAVE TO AMEND. The Court *sua sponte* DISMISSES all claims
5 against the Federal Defendants in their individual capacities WITHOUT LEAVE TO AMEND.
6 The Federal Defendants are DISMISSED from this suit WITH PREJUDICE.

7 **I. BACKGROUND**

8 This is yet another in a series of actions filed by Plaintiff against judges who ruled against
9 him and government officials who allegedly wronged him. Plaintiff has been declared a vexatious
10 litigant in this District and in the Santa Clara County Superior Court for filing repeated lawsuits of
11 this kind. The operative first amended complaint (“FAC”) asserts fifty-nine claims against more
12 than two hundred defendants. *See* FAC, ECF 21. The Court has dismissed the majority of the
13 defendants, some for failure to serve process, some pursuant to pre-filing review orders, and some
14 on the merits after motion practice. *See Order Summarizing Status*, ECF 42. The Court also has
15 dismissed the following claims as to all defendants pursuant to the substantiality doctrine: Claims
16 25, 26, 29, 39, 51, 53, 54, and 58. *See Order Granting County Defs.’ Mot. to Dismiss*, ECF 32.
17 The Court issued an Order Summarizing Status of Service of Process Re All Defendants (“Order
18 Summarizing Status”) on June 16, 2022, advising that the only defendants remaining in the case
19 are the eighty-two Federal Defendants who have filed the current motion. *See Order Summarizing*
20 *Status*, ECF 42.

21 The claims against the Federal Defendants, excluding those that already have been
22 dismissed as noted above, are: Claims 10, 12, 13, 14, 15, 20, 24, 27, 28, 30, 31, 32, 33, 34, 35, 43,
23 46, 56, and 57. Those claims accuse the Federal Defendants of collaborating, conspiring, and
24 colluding to deprive Plaintiff of his constitutional civil rights. The claims themselves do not
25 identify the legal bases for Plaintiff’s civil rights claims, but other allegations in the FAC indicate
26 that those claims are brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau*

1 of *Narcotics*, 403 U.S. 388 (1971),¹ 42 U.S.C. § 1983, and 42 U.S.C. § 1985. FAC ¶ b1. Plaintiff
2 seeks money damages in excess of \$300 billion and a declaration that his civil rights were
3 violated. FAC Request for Relief.

4 **II. LEGAL STANDARD**

5 **A. Rule 12(b)(1)**

6 A party may challenge the Court’s subject matter jurisdiction by bringing a motion to
7 dismiss under Rule 12(b)(1). “A Rule 12(b)(1) jurisdictional attack may be facial or factual.”
8 *Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, such as
9 that asserted here by the Federal Defendants, the movant asserts that the lack of subject matter
10 jurisdiction is apparent from the face of the complaint. *See id.*

11 **B. Rule 12(b)(6)**

12 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
13 claim upon which relief can be granted tests the legal sufficiency of a claim.” *Conservation Force*
14 *v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (internal quotation marks and citation omitted).
15 While a complaint need not contain detailed factual allegations, it “must contain sufficient factual
16 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
17 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A
18 claim is facially plausible when it “allows the court to draw the reasonable inference that the
19 defendant is liable for the misconduct alleged.” *Iqbal*, 550 U.S. at 678.

20 **III. DISCUSSION**

21 Plaintiff does not specify whether the Federal Defendants are sued in their official or
22 individual capacities. As noted above, the Government has filed the current motion to dismiss on
23 behalf of the Federal Defendants in their official capacities and has suggested that the Court
24 should dismiss *sua sponte* the claims against the Federal Defendants in their individual capacities.
25 The Court previously struck Plaintiff’s proofs of service of process on certain of the Federal
26 Defendants and granted Plaintiff until July 8, 2022 to file amended proofs of service. *See Order*
27

28 ¹ “[A] *Bivens* action is the federal analog to an action against state or local officials under § 1983.”
Starr v. Baca, 652 F.3d 1202, 1206 (9th Cir. 2011) (internal quotation marks and citation omitted).

1 Striking Proofs of Service, ECF 48. In light of the Government's appearance on behalf of the
2 Federal Defendants in their official capacities, Plaintiff need not file amended proofs of service,
3 and his failure to file valid proofs of service on the Federal Defendants will not affect the Court's
4 disposition of the current motion to dismiss.²

5 **A. Claims against the Federal Defendants in their Official Capacities**

6 The Government argues that all claims asserted against the Federal Defendants in their
7 official capacities are subject to dismissal under Rule 12(b)(1) based on the substantiality doctrine
8 and sovereign immunity, and under Rule 12(b)(6) for failure to state a claim.

9 Plaintiff's opposition does not address the grounds for dismissal raised by the motion.
10 Instead, Plaintiff advances seven arguments challenging the undersigned's authority and
11 characterizing as "illegal" various aspects of this case. Opp., ECF 44. F

12 First, Plaintiff asserts that this Court's decision to grant the County Defendants' motion to
13 dismiss without oral argument violated his civil rights. The District's Civil Local Rules grant
14 district judges express authority to decide motions without oral argument. *See Civ. L.R. 7-1(b).*
15 Second, Plaintiff argues that this Court lacks authority to dismiss Claims 1-9 of the FAC without
16 convening a three-judge panel pursuant to 28 U.S.C. § 2284. Claims 1-9 are not asserted against
17 the Federal Defendants and § 2284 is not implicated by any of the claims that are asserted against
18 the Federal Defendants.

19 Third, Plaintiff contends that the County Defendants' substitution of Deputy County
20 Counsel Winifred Botha for Deputy County Counsel Jose L. Martinez constitutes an admission
21 that Deputy County Counsel Martinez "collaborated with judge Freeman in order to illegally
22 respond to the FAC." Opp. at 2. Fourth, Plaintiff contends that Judge Tigar is "criminally liable"
23 for denying Plaintiff's motion to disqualify the undersigned. Opp. at 3. Fifth, Plaintiff contends
24 that Judge Tigar's denial of the motion to disqualify constitutes an admission of "the illegality" of

25
26 ² Plaintiff still must file amended proofs of service on certain state, local, and private defendants
27 by July 1, 2022 if he intends to pursue claims against them. *See Order Striking Proofs of Service,*
28 ECF 45. While those defendants previously were dismissed from this suit for failure to serve
process, the Court has granted Plaintiff leave to file valid proofs of service demonstrating that
those defendants were served in compliance with Federal Rule of Civil Procedure 4. *See id.* The
Court will defer entering judgment in this case until after expiration of the July 1, 2022 deadline.

1 dismissing the FAC. *Id.* Those contentions are nonsensical.

2 Sixth, Plaintiff asserts that the United States Attorney's Office improperly removed a
3 different case from the Santa Clara County Superior Court, which was assigned to District Judge
4 Yvonne Gonzalez Rogers and subsequently dismissed. Plaintiff asserts that the removal of the
5 case and subsequent dismissal violated his constitutional rights. Seventh, Plaintiff asserts that the
6 United States Attorney's Office lacks authority to seek dismissal of the FAC in this case and
7 instead must institute criminal proceedings against the undersigned, Judge Tigar, Judge Gonzalez
8 Rogers, Deputy County Counsel Martinez, and itself. Plaintiff cites no authority precluding the
9 United States Attorney's Office from removing a case to federal court or requiring it to prosecute
10 government officials before seeking dismissal of non-meritorious civil claims against them.

11 The Federal Defendants' reply points out the shortcomings of Plaintiff's opposition in
12 great detail, making clear that the opposition lacks any merit whatsoever and is irrelevant to the
13 Court's evaluation of the grounds for dismissal argued by the Federal Defendants.

14 The official capacity claims against the Federal Defendants are subject to dismissal without
15 leave to amend for the reasons articulated in the motion and discussed below. The Court first
16 addresses the Federal Defendants' arguments based on lack of subject matter jurisdiction, because
17 "jurisdiction generally must precede merits in dispositional order." *Ruhrgas AG v. Marathon Oil*
18 *Co.*, 526 U.S. 574, 577 (1999). The Federal Defendants contend that this Court lacks subject
19 matter jurisdiction over all claims asserted against them based on the substantiality doctrine and
20 sovereign immunity.

21 **1. Substantiality Doctrine**

22 "[I]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial
23 federal question should be presented." *Hagans v. Lavine*, 415 U.S. 528, 537 (1974) (internal
24 quotation marks and citation omitted). "Under the substantiality doctrine, the district court lacks
25 subject matter jurisdiction when the question presented is too insubstantial to consider." *Cook v.*
26 *Peter Kiewit Sons Co.*, 775 F.2d 1030, 1035 (9th Cir. 1985). Thus, "federal courts are without
27 power to entertain claims otherwise within their jurisdiction if they are so attenuated and
28 unsubstancial as to be absolutely devoid of merit, wholly unsubstancial, obviously frivolous, plainly

1 unsubstantial, or no longer open to discussion.” *Hagans*, 415 U.S. at 537 (internal quotation
2 marks and citations omitted).

3 Claims that are too insubstantial to give rise to subject matter jurisdiction include those
4 alleging bizarre or wholly implausible conspiracy theories. *See, e.g., Yi Rong v. Seymour*, No.
5 CV-20-00410-TUC-JCH, 2020 WL 7136565, at *2 (D. Ariz. Nov. 13, 2020) (allegations of “an
6 implausible conspiracy between the Arizona Superior Court, its judges and commissioners, and
7 three attorneys” too insubstantial to give rise to federal jurisdiction); *Caruso v. United States*, No.
8 2:16-cv-2902-TLN-KJN PS, 2017 WL 1426998, at *2 (E.D. Cal. Apr. 21, 2017) (claims that
9 plaintiff was “the focus of a large conspiracy involving attorneys, pharmaceutical companies, and
10 faculty from various academic institutions” too insubstantial to give rise to federal jurisdiction);
11 *Zeiny v. United States*, No. 5:13-CV-01220 EJD, 2014 WL 1051641, at *4 (N.D. Cal. Mar. 17,
12 2014) (applying substantiality doctrine to dismiss claims alleging “a conspiracy of clandestine
13 CIA control over Plaintiff’s travel, religious practice, medical care, and employment due to no
14 reason other than his national origin and involvement with the Muslim community”).

15 The nineteen remaining claims against the Federal Defendants assert a series of separate
16 conspiracies and alleged misconduct involving judges and federal officials in all three branches of
17 government to deprive Plaintiff of various constitutional rights. The Court previously dismissed
18 similar claims against the County Defendants under the substantiality doctrine. *See Order*
19 Granting County Defs.’ Mot. to Dismiss at 7. There is no meaningful difference between those
20 claims and the claims asserted against the Federal Defendants. The Court determines that the
21 claims against the Federal Defendants are subject to dismissal under the substantiality doctrine.

22 Claim 10 alleges that in 2011 Judge Seeborg collaborated with President Obama, Attorney
23 General Holder, U.S. Attorney Haag, AUSA Scharf, Postmaster General Potter, and Court staff by
24 dismissing one of Plaintiff’s prior suits. FAC ¶ c10.

25 Claim 12 alleges a conspiracy with respect to the dismissal of a subsequent suit filed by
26 Plaintiff, but substitutes Judge Koh and Postmaster General Donahoe for their counterparts in
27 Claim 10, removes Attorney General Holder, and adds AUSA Cormier. FAC ¶ c12.

28 Claim 13 alleges a conspiracy between Supreme Court Justices and Solicitor General

1 Verrilli in connection with the denial of Plaintiff's petition for a writ of certiorari in 2013. FAC
2 ¶ c13.

3 Claim 14 alleges a conspiracy between Judge Illston and federal prosecutors in connection
4 with the dismissal of a third lawsuit. FAC ¶ c14.

5 Claim 15 alleges that Judge Chen conspired with federal prosecutors and Court staff in
6 declaring Plaintiff a vexatious litigant in 2013 and dismissing a fourth lawsuit. FAC ¶ c15.

7 Claim 20 alleges that Judge Gonzales Rogers conspired with Judge Chen and Postmaster
8 General Brennan in the pre-filing screening of a lawsuit conducted pursuant to that vexatious
9 litigant order. FAC ¶ c20.

10 Claim 24 alleges a conspiracy between Judge Orrick and federal prosecutors in refusing to
11 permit Plaintiff to intervene in a lawsuit regarding immigration policy. FAC ¶ c24.

12 Claim 27 alleges that Court staff conspired with Judge Hamilton in declining to file one of
13 Plaintiff's complaints. FAC ¶ c27.

14 Claim 28 alleges a conspiracy among this Court, state prosecutors, and Court staff arising
15 from the dismissal of a complaint based on this Court's pre-filing screening order. FAC ¶ c28.

16 Claims 30, 31, 32, 56, and 57 allege conspiracies to "legitimize," "continue," "prolong," or
17 "sustain" violations of Plaintiff's civil rights based on political and judicial appointments and
18 certifications of elections: Claim 30 asserts that Senator Padilla colluded with Vice President
19 Harris by certifying her election as Senator and Vice President, FAC ¶ c30; Claim 31 asserts that
20 President Biden conspired with Secretary Becerra in selecting him as Secretary of Health and
21 Human Services, FAC ¶ c31; Claim 32 asserts a conspiracy between Governor Newsom and
22 Senator Padilla in the latter's appointment to the Senate, FAC ¶ c32; Claim 56 asserts a conspiracy
23 between President Biden, President Obama, Vice President Harris, Senator Padilla, Governor
24 Newsom, and California Secretary of State Weber in certifying the results of the Newsom recall
25 election, FAC ¶ c56; and Claim 57 asserts that President Biden conspired with Judge Koh by
26 nominating her to the Ninth Circuit. FAC ¶ c57.

27 Claim 33, the only claim against the Federal Defendants not predicated on an alleged
28 conspiracy, asserts that Attorney General Barr "prolonged" the violation of Plaintiff's civil rights

1 by resigning from office without responding to Plaintiff's petition for the Attorney General to
2 intervene in one of his prior lawsuits. FAC ¶ c33.

3 Claims 34 and 35 allege conspiracies among various Members of Congress to "prolong"
4 and "sustain" violations of Plaintiff's civil rights arising from the two impeachments of the former
5 President and the certification of House Speaker Pelosi. FAC ¶¶ c34, c35.

6 Claim 43 alleges that Ninth Circuit Executive Smith "collaborated" with Ninth Circuit
7 Chief Justice Thomas by returning to Plaintiff a judicial misconduct complaint "for correction."
8 FAC ¶ c43.

9 Claim 46 alleges that unnamed members of the 107th Congress "collaborated to deprive
10 plaintiff of civil rights" by enacting "the Judicial Conduct and Disability Act of 1980." FAC
11 ¶ c46.

12 "These allegations are the type of insubstantial and frivolous conspiracy theory claims that
13 are routinely dismissed under the substantiality doctrine pursuant to Fed. R. Civ. P. 12(b)(1)." *Ticktin v. C.I.A.*, No. CV08-998-PHX-MHM, 2009 WL 976517, at *4 (D. Ariz. Apr. 9, 2009)
14 (collecting cases). "District courts in this and other circuits dismiss cases with prejudice when
15 they—like this case—involve claims regarding implausible government conspiracies. . . ." *Foster*
16 *v. Carter*, No. 3:16-CV-02336-LB, 2016 WL 7852472, at *3 (N.D. Cal. Dec. 1, 2016). The Court
17 dismisses Claims 10, 12, 13, 14, 15, 20, 24, 27, 28, 30, 31, 32, 33, 34, 35, 43, 46, 56, and 57 for
18 lack of subject matter jurisdiction under the substantiality doctrine.

20 The motion to dismiss all official capacity claims against the Federal Defendants for lack
21 of subject matter jurisdiction under the substantiality doctrine is GRANTED WITHOUT LEAVE
22 TO AMEND.

23 **2. Sovereign Immunity**

24 "The United States, as sovereign, is immune from suit save as it consents to be sued."
25 *United States v. Sherwood*, 312 U.S. 584, 586 (1941); *see also Hodge v. Dalton*, 107 F.3d 705,
26 707 (9th Cir. 1997) ("The United States is immune from suit unless it consents to waive its
27 sovereign immunity."). "Any waiver of immunity must be unequivocally expressed, and any
28 limitations and conditions upon the waiver must be strictly observed and exceptions thereto are

1 not to be implied.” *Id.* (internal quotation marks and citation omitted). “The doctrine of sovereign
2 immunity applies to federal agencies and to federal employees acting within their official
3 capacities.” *Hodge*, 107 F.3d at 707.

4 As noted above, Plaintiff sues the Federal Defendants in their official capacities for alleged
5 constitutional violations under *Bivens*, § 1983, and § 1985, seeking money damages and a
6 declaration that his civil rights were violated. FAC Request for Relief. Those claims are barred
7 by sovereign immunity. “[T]he United States has not waived its sovereign immunity in actions
8 seeking damages for constitutional violations.” *Thomas-Lazear v. F.B.I.*, 851 F.2d 1202, 1207
9 (9th Cir. 1988). Moreover, “[a] *Bivens* action can be maintained against a defendant in his or her
10 individual capacity only, and not in his or her official capacity.” *Consejo de Desarrollo
Economico de Mexicali, A.C. v. United States*, 482 F.3d 1157, 1173 (9th Cir. 2007) (internal
11 quotation marks and citation omitted). “This is because a *Bivens* suit against a defendant in his or
12 her official capacity would merely be another way of pleading an action against the United States,
13 which would be barred by the doctrine of sovereign immunity.” *Id.*

14 While Plaintiff’s constitutional claims appear to be brought under *Bivens*, § 1983, and
15 § 1985, the FAC does includes references to other statutes, including 28 U.S.C. § 1331, 28 U.S.C.
16 § 2801, 28 U.S.C. § 1343, and 42 U.S.C. § 1988. FAC ¶ b.1. None of those statutes waive the
17 United States’ sovereign immunity. Under 28 U.S.C. § 1331, a district court has original
18 jurisdiction in all civil actions arising under the Constitution, laws or treaties of the United States,
19 but the statute “cannot by itself be construed as constituting a waiver of the government’s defense
20 of sovereign immunity.” *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985).

21 The Declaratory Judgment Act, codified at 28 U.S.C. § 2801, “does not constitute an
22 independent basis for jurisdiction.” *Gabriel v. Gen. Servs. Admin.*, 547 F. App’x 829, 831 (9th
23 Cir. 2013). “Numerous courts have concluded that the Declaratory Judgment Act cannot be
24 construed as a waiver of sovereign immunity.” *Wanxia Liao v. United States*, No. C 11-02494
25 JSW, 2012 WL 3945772, at *10 (N.D. Cal. Apr. 16, 2012).

26 Under 28 U.S.C. § 1343, a district court has original jurisdiction over certain civil actions;
27 however, that statute “does not waive sovereign immunity.” *Jachetta v. United States*, 653 F.3d

1 898, 907-08 (9th Cir. 2011). Finally, 42 U.S.C. § 1988 “does not create independent causes of
2 action, it simply defines procedures under which remedies may be sought in civil rights actions.”
3 *Lukenbill v. Dep’t of the U.S. Air Force*, No. CV F 10-1003 LJO SKO, 2010 WL 3717297, at *9
4 (E.D. Cal. Sept. 16, 2010) (quotation marks and citation omitted).

5 The motion to dismiss all official capacity claims against the Federal Defendants for lack
6 of subject matter jurisdiction on the ground of sovereign immunity is GRANTED WITHOUT
7 LEAVE TO AMEND.

8 **3. Conclusion**

9 In conclusion, the Court determines that the motion to dismiss all official capacity claims
10 against the Federal Defendants – Claims 10, 12, 13, 14, 15, 20, 24, 27, 28, 30, 31, 32, 33, 34, 35,
11 43, 46, 56, and 57 – must be GRANTED WITHOUT LEAVE TO AMEND for lack of subject
12 matter jurisdiction. In light of its determination that all official capacity claims against the Federal
13 Defendants are subject to dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction, the
14 Court is without authority to reach the Federal Defendants’ alternative merits arguments under
15 Rule 12(b)(6). *See Cook*, 775 F.2d at 1035 (Once a court dismisses claims for lack of subject
16 matter jurisdiction under the substantiality doctrine, the court retains “no power to make
17 judgments relating to the merits of the case.”).

18 **B. Claims against the Federal Defendants in their Individual Capacities**

19 Although the Government does not represent the Federal Defendants in their individual
20 capacities, the Government argues in its brief that there are numerous grounds for the Court to
21 dismiss all individual capacity claims against the Federal Defendants *sua sponte*. *See* Mot. at 17-
22 24, ECF 39. Plaintiff does not respond to the Government’s suggestion that the Court should
23 dismiss all individual capacity claims *sua sponte*.

24 The Court determines that all claims against Federal Defendants in their individual
25 capacities are subject to dismissal for lack of subject matter jurisdiction under the substantiality
26 doctrine. All of the arguments and authorities on the substantiality doctrine discussed above with
27 respect to the claims against the Federal Defendants in their official capacities apply with equal
28 force to claims brought against the Federal Defendants in their individual capacities.

1 The claims against the Federal Defendants in their individual capacities also are subject to
2 dismissal for lack of subject matter jurisdiction under various absolute immunities. *See Ou-Young*
3 *v. Roberts*, No. CV 13-03676 SI, 2013 WL 5978458, at *2 (N.D. Cal. Nov. 8, 2013) (“A claim of
4 entitlement to absolute immunity can be brought as a motion to dismiss under Rule 12(b)(1).”);
5 *Uptergrove v. United States*, No. CV F-08-0303 AWISMS, 2008 WL 2413182, at *5 (E.D. Cal.
6 June 12, 2008) (“Thus, where an official is entitled to absolute immunity, that immunity bars the
7 court's jurisdiction as to claims against that official so that dismissal is warranted pursuant to Rule
8 12(b)(1).”). Federal court personnel have absolute quasi-judicial immunity when performing tasks
9 that are “an integral part of the judicial process.” *Mullis v. United States Bankr. Court*, 828 F.2d
10 1385, 1390 (9th Cir. 1987). “The absolute immunity of legislators, in their legislative functions . . .
11 . is well settled.” *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). Current and former presidents
12 of the United States are “entitled to absolute immunity from damages liability predicated on [their]
13 official acts.” *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982). Government attorneys are entitled
14 to absolute immunity for acting in their capacity as advocates. *See Fry v. Melaragno*, 939 F.2d
15 832, 837 (9th Cir. 1991).

16 In conclusion, the Court determines that all individual capacity claims against the Federal
17 Defendants – Claims 10, 12, 13, 14, 15, 20, 24, 27, 28, 30, 31, 32, 33, 34, 35, 43, 46, 56, and 57 –
18 must be DISMISSED WITHOUT LEAVE TO AMEND for lack of subject matter jurisdiction.

19 In light of its determination that all individual capacity claims against the Federal
20 Defendants are subject to dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction, the
21 Court is without authority to reach other potential grounds for dismissal under rule 12(b)(6). *See*
22 *Cook*, 775 F.2d at 1035 (Once a court dismisses claims for lack of subject matter jurisdiction
23 under the substantiality doctrine, the court retains “no power to make judgments relating to the
24 merits of the case.”).

25 **C Dismissal of Federal Defendants with Prejudice is Appropriate**

26 All claims against the Federal Defendants in both their official capacities and their
27 individual capacities having been dismissed for lack of subject matter jurisdiction, the Federal
28 Defendants listed in part IV below are DISMISSED from this suit WITH PREJUDICE.

1 **IV. ORDER**

2 It is HEREBY ORDERED that:

- 3 (1) The motion to dismiss all claims against the Federal Defendants in their official
4 capacities is GRANTED WITHOUT LEAVE TO AMEND;
5 (2) All claims against the Federal Defendants in their individual capacities are *sua*
6 *sponte* DISMISSED WITHOUT LEAVE TO AMEND;
7 (3) The Federal Defendants, listed below, are DISMISSED from this suit WITH
8 PREJUDICE:

9 Susan Y. Soong
10 Kathleen M. Shambaugh
11 Snooki Puli
12 Tiffany Salinas-Harwell
13 Betty Walton
14 Diane Miyashiro
15 Lisa B. Fitzgerald
16 Elizabeth A. Smith
17 Molly C. Dwyer
18 Jessica Poblete Dela Cruz
19 Joseph R. Biden, Jr.
20 Kamala D. Harris
21 Merrick B. Garland
22 Xavier Becerra
23 Barack H. Obama
24 Eric H. Holder, Jr.
25 Jefferson B. Sessions III
26 William P. Barr
27 Donald B. Verrilli, Jr.
28 Stephanie M. Hinds

United States District Court
Northern District of California

1 Melinda Haag
2 Brian J. Stretch
3 David L. Anderson
4 Michelle Lo
5 Pamela T. Johann
6 Sara Winslow
7 James A. Scharf
8 Claire T. Cormier
9 John E. Potter
10 Patrick R. Donahoe
11 Megan Brennan
12 Alex Padilla
13 Nancy P. Pelosi
14 Jared W. Huffman
15 John R. Garamendi
16 C. Michael Thompson
17 Doris O. Matsui
18 Amerish B. Bera
19 Jerry McNerney
20 Joshua K. Harder
21 Mark DeSaulnier
22 Barbara J. Lee
23 K. L. Jacqueline Speier
24 Eric M. Swalwell
25 James M. Costa
26 Rohit Khanna
27 Anna G. Eshoo
28 Zoe Lofgren

United States District Court
Northern District of California

1 James V. Panetta
2 Salud O. Carbajal
3 Julia A. Brownley
4 Judy M. Chu
5 Adam B. Schiff
6 Antonio Cardenas
7 Bradley J. Sherman
8 Peter R. Aguilar
9 Graciela F. Napolitano
10 Ted W. Lieu
11 Jimmy Gomez
12 Norma J. Torres
13 Raul Ruiz
14 Karen R. Bass
15 Linda T. Sanchez
16 Lucille E. Roybal-Allard
17 Mark A. Takano
18 Maxine M. Waters
19 Nanette D. Barragan
20 Katherine M. Porter
21 J. Luis Correa
22 Alan S. Lowenthal
23 Michael T. Levin
24 Juan C. Vargas
25 Scott H. Peters
26 Sara J. Jacobs
27 Jerrold L. Nadler
28 Jamin B. Raskin

1 Joaquin Castro
2 David N. Cicilline
3 Madeleine Dean
4 Diana L. DeGette
5 Joseph D. Neguse
6 Members of the 107th Congress are U.S. senators or representatives
7 14 who served between January 3, 2001 and January 3, 2003³
8 (4) This order terminates ECF 39.

9
10 Dated: June 29, 2022


11 BETH LABSON FREEMAN
12 United States District Judge

28
29 ³ The Court follows Plaintiff's lead in treating this group as a single defendant. *See* FAC ¶ 214.